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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPLICANT(s):   Michael Miettinen

SERIAL NO.:   09/879,438   ART UNIT: 2173

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TITLE: SELECTION OF AN ALTERNATIVE

ATTORNEY

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Board of Patent Appeals and Interferences

United States Patent and Trademark Office

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APPELLANTS' BRIEF

This is an appeal from the final rejection of the claims in the above-identified application. A Notice of Appeal was mailed on September 13, 2005.

I. REAL PARTY IN INTEREST

The real party in interest in this Appeal is:

Nokia Corporation

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences regarding this application.

III. STATUS OF CLAIMS

Claims 17-32, 34-38 and 40-56 are pending in the application.

Claims 17-32, 34-38 and 40-56 have been finally rejected.

The claims on appeal are 17-32, 34-38 and 40-56.

Claims 1-16, 33 and 39 have been cancelled.

IV. STATUS OF AMENDMENTS

There was no amendment filed under 37 C.F.R 1.116.

V.   SUMMARY OF CLAIMED SUBJECT MATTER

The present invention is method and apparatus for recognizing a selection from at least two alternatives, which has as its object making the selection process easy so that a user can eventually possibly make a selection without looking at a selection disc. The apparatus can be, e.g., a computer or a mobile station (cell phone).

The appealed independent claims are:

17. A method for recognizing a selection from a set of at least two alternatives, the method comprising:

determining the positions corresponding to each alternative in the space (p.6, l.31) surrounding a user (p.6, l.10; Figs. 1 and 2, Ref. No.10) on the basis of their direction with respect to the user so that the locations of the positions remain substantially the same with respect to the user irrespective of the location of the user (p.7, ll.14-16);

allowing the user to do a first movement of a member of the body to a position corresponding to an alternative the user desires (p.10, ll.10-16; Fig.5, Nos.52,53,54);

recognizing a second movement of a member of the body done by the user in the position corresponding to the alternative the user desires (p.10, ll.20-21; Fig.5, No.57);

in response to the second movement, recognizing the selection the user desires as completed (p.10, ll.16-18; Fig. 5, No.57); and

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providing the recognized selection as an output (p.10, ll. 23-24; Fig. 5, Nos.58,59),

wherein said positions are sectors (p.6, ll.30-31;Figs.1 and 2, No.15) on an arcuate area (p.6, l.30; Figs.1 and 2, No.11) and said first movement comprises moving the member of the body (p.7, ll.4-7) to a certain sector (p.7, ll.25-28; Fig. 1, No.15B; Fig. 2, No.15B') on said arcuate area.

24. An electronic device (Fig.3, No.30) for recognizing a selection (p.7, l.30) from a set of at least two alternatives, the device comprising:

means (Fig.3, Nos. 35,36A,36B; p.8, ll.15-16) for determining positions surrounding the user that correspond to each alternative on the basis of their direction with respect to the user so that the locations of the positions remain substantially the same with respect to the user irrespective of the location of the user (p.7, ll.14-16);

means for allowing the user to do a first movement of a member of the body to a position corresponding to an alternative the user desires (p.10, ll.10-16);

means for recognizing a second movement of a member of the body done by the user in the position (p.8, ll.1-2,19-20, 22-24; Fig.3, No.32);

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means for recognizing the carrying out of the selection the user desires in response to the second movement (p.8, ll. 19-20; Fig.3,32); and

an output (Figs.3 and 4, No.37) for outputting the recognized selection (p.9, ll.30-31),

wherein said means for determining are arranged to determine said positions as sectors (p.6, ll.30-31; Figs. 1 and 2, No.15) on an arcuate area (p.6, l.30; Figs.1 and 2, No.11).

45. A system for recognizing user's selection, the system comprising:

a central unit (Figs.3, 4, and 6, 31; p.7, l.31)

a three dimensional display device (Fig. 3, No.35; p.7, ll. 31-32; p.8, ll.8-10),

the central unit comprising communication means (Figs.3 and 4, No.37) for communicating positions corresponding to selection alternatives to the three dimensional display device (p.8, ll.3 and 4),

the three dimensional display device being arranged to display to the user the positions corresponding to selection alternatives surrounding the user (Fig.1, 10; p.8, l.30), said positions being sectors on an arcuate area (Figs. 1 and 2, No.15; p.6, l.31) surrounding the user,

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means (p.8, 11.12,19-20,22-24; Fig.3, No.32) for recognizing a movement of a member of a body of the user on said arcuate area, and

communication means (Figs.3 and 4, No.37; p.9, 11.30-31) for communicating a recognized movement from the means for recognizing to the central unit,

wherein the central unit being arranged to process (Fig.4, 41; p.9, 11.28-29) the selection of an alternative on the basis of the recognized movement.

52. A user interface for recognizing a selection from a set of at least two alternatives, the user interface comprising:

means (Figs.3, 4, and 6, Nos. 35,36A,36B; p.8, 11.15-16) for determining positions surrounding the user that correspond to each alternative on the basis of their direction with respect to the user so that the locations of the positions remain substantially the same with respect to the user irrespective of the location of the user (p.7, 11.14-16);

means for allowing the user to do a first movement of a member of the body to a position corresponding to an alternative the user desires (p.10, 11.10-16);

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means for recognizing a second movement of a member of the body done by the user in the position (p.8, ll.1-2,19-20,22-24; Fig.3, No.32);

means for recognizing the carrying out of the selection the user desires in response to the second movement (p.8, ll.19-20; Fig.3, No.32); and

an output (Figs.3 and 4, No.37) for outputting the recognized selection (p.9, ll.30-31),

wherein said means for determining are arranged to determine said positions as sectors (p.6, ll.30-31; Figs. 1 and 2, No.15) on an arcuate area (p.6, l.30; Figs.1 and 2, No.11).

In addition the following dependent claims are being separately argued:

18. A method according to claim 17, further comprising:

indicating (Fig.5, No.54; p.10, ll.13-16) to the user at least once the positions corresponding to the alternatives as one of the following: showing virtual images in each position, showing an arcuate area (Figs.1 and 2, No.11) with a plurality of sectors at the level of the user's waist (p.6, l.33; Figs.1 and 2, No.11), said sectors corresponding said

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positions, and informing the alternative corresponding to a
position audiophonically (p.10, 11.22-24).

19. A method according to claim 17, further comprising:

demonstrating (Fig.5, No.58; p.10, 1.22) to the user the
alternative indicated at any given time.

20. A method according to claim 17, further comprising:

recognizing the second movement contactlessly (p.8, 11.19-20).

25. A device according to claim 24, wherein:

the device further comprises means (Fig.3, Nos.35,36A,36B) for
indicating to the user the positions corresponding to the
alternatives as one of the following:

showing a virtual image in each position, showing an arcuate
area (Figs.1 and 2, No.11) with a plurality of sectors at the
level of the user's waist ((p.6, 11.32-33), said sectors
corresponding said positions, and informing the alternative
corresponding to a position audiophonically (p.10, 11.22-24).

26. A device according to claim 24, wherein:

the device further comprises presentation means (Fig.3, Nos.42,35,36A,36B; p.9, 1.31, to p.10, 1.2) for indicating the alternative indicated at any given time to the user (p.7, 11.7-10).

27. A device according to claim 24, wherein:

the means for recognizing the second movement carried out by the user in the position are adapted to recognize the second movement contactlessly (p.8, 11.19-20).

35. A method according to claim 21, wherein said first movement is a substantially horizontal arcuate movement of the hand to a certain sector of an arcuate area situated substantially in a horizontal plane (p.14, 11.9-10).

41. A device according to claim 28, wherein said first movement is a substantially horizontal arcuate movement of the hand to a certain sector of a circular area situated substantially in a horizontal plane (p.14, 11.9-10).

48. A system according to claim 45, wherein the means for recognizing is a shape tape (p.13, 11.13-18).

50. (Previously Presented) A system according to claim 45, wherein the three dimensional display device and the means for recognizing are comprised in the same unit(p.9, ll.1-3).

51. A system according to claim 45, wherein the three dimensional display device is virtual glasses (Fig.3, Nos. 35,36A, and 36B).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 17-32, 34, 38, 40, 44-46, 47, 49 and 51-52 (<u>sic</u>, should be 17-32,34,38,40,44-46,47,49,50 and 52-56, see the last full paragraph on p.9, the paragraph bridging pp.9 and 10, and the second full paragraph on p.13 in the final rejection of July 25, 2005) are rejected under 35 U.S.C. 103(a) as being unpatentable by applicant submitted IDS issued to 1999 IEEE Shadow Gestures: 3D Hand Pose Estimation using a Single Camera (hereinafter Shadow Gestures) in view of Easty et. al. (USPN: 6,448,987) hereinafter Easty.

2. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shadow Gestures in view of Easty and further in view of Kumar et. al. (USPN:6,624,833) hereinafter Kumar.

3. Claims 35-37, 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shadow Gestures in view of Easty and further in view of Selker (USPN:6,549,219).

4. Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shadow Gestures in view of Easty and further in view of applicant submitted IDS issued to Tomi Engdahl, 1999: 3D glasses and other 3D display devices (hereinafter Engdahl).

VII. ARGUMENT

1. Claims 17-32, 34, 38, 40, 44-46, 47, 49,50 and 52-56 (as corrected, supra) are rejected under 35 USC 103(a) as being unpatentable by Shadow Gestures in view of Easty.

It is a new and profound realization of the inventors to determine a correspondence between given alternatives and positions surrounding the user so that the user can use spatial memory to choose an alternative. Such a selection requires no displays and visual feedback. The selection is actually so ingenious and inventive that it is possible to misinterpret it as a simple invention, but the normal patentability criteria clearly demonstrate that it is not obvious: it is simply impossible to form a valid rejection by any combination of the known references, if the claimed invention is not impermissibly used as a blue print to arrive at the claimed invention using hindsight. None of the references discloses or suggests the

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claimed invention nor motivates one to seek such a drastic change over the art.

The claimed invention fundamentally and totally differs from the prior art and even from the approach taken in the prior art. In particular, neither Easty nor Shadow Gestures discloses that positions corresponding to alternatives would be determined in respect of the user, irrespective of the location of the user.

Easty discloses an arrangement, wherein a display may present rotating discs which represent menu information. There is no fixed relationship with given alternatives and the display let alone with a user. Easty also fails to even hint towards using body member movement detection for taking user input by an input device.

Shadow Gestures discloses detecting certain finger gestures from the shadow of a point light source falling onto a table by using an obliquely positioned camera. It is clear from the Fig. 2 system setup, that the detection of the finger gestures requires presentation of these so that the shadow falls onto the table. Hence, the user must show the gestures at a position independent of the user and dependent on the location around the user. This fully contrasts with the claimed invention. Further still, Shadow Gestures does not disclose or teach making any use of the actual position of the hand on top of the table. The camera system detects the shape of the shadow rather than its location so that there is no detection of alternatives such that one should correspond to a given part of the table. Notice, that the hand movements are not projected onto a display of the system, but instead a 3D model may be altered using the gestures

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detected.

Also consider that "determining the positions corresponding to each alternative in the space surrounding a user on the basis of their direction with respect to the user so that the locations of the positions remain substantially the same with respect to the user irrespective of the location of the user" as recited in the claims 17, 24, 51 is not described in Shadow Gestures.

For example, in "determining the positions corresponding to each alternative in the space surrounding a user" - determination of positions of alternatives is not done, and - alternatives are not in the space surrounding the user but alternatives are displayed on a flat screen.

As Examiner indicates, Shadow Gestures just only describes determining position and orientation of a hand and its shadow, see Office Action page 3, first paragraph.

In general, in Shadow Gestures a view/UI is on flat screen ahead of the user, whereas in the present invention a view/UI can be seen to surround the user in the space.

Further, the view/UI on the flat screen is manipulated by determining hand movements on a table, see Fig. 2 in Shadow Gestures,

- further, hand movements are not determined over the view/UI on the flat screen, and

- further, hand movements are not presented as hand movements on the screen.

Additionally, Examiner noted that Shadow Gestures describes "allowing the user to do a first movement of a member of the body to a position corresponding to an alternative the user desires". Actually, Shadow Gestures describes how a robot arm on a flat screen is controlled. This doesn't describe selection by a member of a body but a selection of robot arm controlled by a member of a body. Further, Shadow Gestures doesn't describe any alternatives corresponding to some positions, or selection of such alternatives.

Additionally, Examiner noted that Shadow Gestures describes "recognizing a second movement of a member of the body done by the user in the position corresponding to the alternative the user desires". As stated above, there is no body movement in Shadow Gestures.

Further, it is noted that the object of the present invention to avoid requiring the user to carefully concentrate when performing a selection (see p.2, ll.23-24) so that with practice selection can be done without looking at the selection disc at all (see p.7, ll.19-22). This is hardly possible with the complex outer ring 11 and inner ring 12 structure of Easty. In fact, the object of Easty is to present multiple categories of entertainment in a balanced fashion (see col.2, ll.51-53). Since Easty is for a different problem than the present invention, it is improper to combine it with Shadow Gestures to solve the problem solved by the present invention; see Teleflex Inc. v. Ficosa North America Corp., 63 USPQ2d 1374, 1387.

Concerning claim 45, the Examiner noted that Shadow Gestures describes "a three dimensional display device". Actually, Shadow Gestures describes a flat screen displaying a "3D fly

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through". Thus, claim 45 is patentable since even if the references are combined, the results do not meet the limitations of claim 45.

Since, as pointed out above, the references cannot be properly combined, and even if the references are somehow combined, the result is not the present invention, the rejection of claims 17-32, 34, 38, 40, 44-47, 49,50 and 52-56 should be reversed.

2. Claim 48 is rejected under 35 USC 103(a) as being unpatentable over Shadow Gestures 3D in view of Easty, and further in view of Kumar.

Similarly, Kumar fails to disclose the above discussed features. Thus claim 48 is patentable for this reason. In addition, it also fails to disclose the claimed shape tape. The Examiner has cited col.5, ll.33-34, but there is no mention there of the claimed shape tape. Thus combining Kumar with the first two references does not result in the invention of claim 48. Also, Kumar is for the problems of robustness, real time operation and low cost (see col.3, ll.9-13). Thus there is no teaching to combine it with the first two references to solve the problem of ease of use.

Hence for these additional reasons the rejection of claim 48 should be reversed.

3. Claims 35-37 and 41-43 are rejected under 35 USC 103(a) as being unpatentable over Shadow Gestures in view of Easty, and further in view of Selker.

Selker fails to disclose the above discussed features. Thus combining it with the first two references does not result in the invention of claims 35-37 and 41-43. Further, as the

Examiner correctly states, Selker shows a multilevel arrangement which requires a vertical hand movement in addition to the horizontal one as claimed in claims 35-37 and 41-43. Hence it is a far more difficult system to learn compared to the present invention of these claims. Thus it is not combinable with the first two references to solve the problem of ease of use. For this additional reason, claims 35-37 and 41-43 are patentable.

Hence the rejection of these claims should be reversed.

4. Claim 51 is rejected under 35 USC 103(a) as being unpatentable over Shadow gestures in view of Easty, and further in view of Engdahl.

Similarly, Engdahl fails to disclose the above-discussed features. Thus combining it with the first two references does not result in the invention of claim 51.

Hence the rejection of claim 51 should be reversed.

5. Claims 18 and 25 recite as showing to the user <u>the positions</u> corresponding to the alternatives. The Examiner cites Shadow Gestures (p.484, right col. ll.7-8 and Fig.9). However, there is merely disclosed virtual images. There is no disclosure of different positions corresponding to different alternatives. For this additional reason claims 18 and 25 are patentable.

6. Claims 19 and 26 recite demonstrating to the user the alternative at any given time. The Examiner cites Shadow Gestures (p.479, left col., ll.26-29). However, nowhere in the cited portion is there anything about indicating anything to the user, only recognizing hand gestures for purposes of control is discussed. For this additional reason, claims 19 and 26 are patentable.

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7. Claims 20 and 27 recite correctly recognizing a second movement. The Examiner cites Shadow Gestures (p.484, right col., 11.7-8 and Fig.9). However, there is nothing therein about a <u>second</u> gesture. For this additional reason, claims 20 and 27 are patentable.

8. Claim 50 recites that the display device and the recognizing means are in the same unit, e.g., glasses 35 and camera 32. The Examiner cites p.485 of Shadow Gestures, but this merely states that a single camera recognizes gestures and tracks the users hand. There is nothing about a display device. For this additional reason, claim 50 is patentable.

Thus applicants request this Honorable Board to reverse the rejection of all appealed claims.
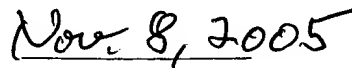
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Respectfully submitted,

Henry I. Steckler
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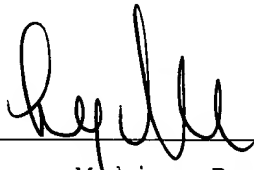425 Post Road

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VIII.   CLAIM APPENDIX

The texts of the claims involved in the appeal are:

17.   A method for recognizing a selection from a set of at least two alternatives, the method comprising:

determining the positions corresponding to each alternative in the space surrounding a user on the basis of their direction with respect to the user so that the locations of the positions remain substantially the same with respect to the user irrespective of the location of the user;

allowing the user to do a first movement of a member of the body to a position corresponding to an alternative the user desires;

recognizing a second movement of a member of the body done by the user in the position corresponding to the alternative the user desires;

in response to the second movement, recognizing the selection the user desires as completed; and

providing the recognized selection as an output,

wherein said positions are sectors on an arcuate area and said first movement comprises moving the member of the body to a certain sector on said arcuate area.

18.   A method according to claim 17, further comprising:

indicating to the user at least once the positions corresponding to the alternatives as one of the following: showing virtual images in each position, showing an arcuate

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area with a plurality of sectors at the level of the user's waist, said sectors corresponding said positions, and informing the alternative corresponding to a position audiophonically.

19. A method according to claim 17, further comprising:

demonstrating to the user the alternative indicated at any given time.

20. A method according to claim 17, further comprising:

recognizing the second movement contactlessly.

21. A method according to claim 17, wherein the first movement is the movement of the user's hand.

22. A method according to claim 17, further comprising:

carrying out a certain first function in response to the output.

23. A method according to claim 17, further comprising:

allowing the user to carry out a certain second activity with a specific third movement of the member of the body.

24. An electronic device for recognizing a selection from a set of at least two alternatives, the device comprising:

means for determining positions surrounding the user that correspond to each alternative on the basis of their direction with respect to the user so that the locations of the positions remain substantially the same with respect to the user irrespective of the location of the user;

means for allowing the user to do a first movement of a member of the body to a position corresponding to an alternative the user desires;

means for recognizing a second movement of a member of the body done by the user in the position;

means for recognizing the carrying out of the selection the user desires in response to the second movement; and

an output for outputting the recognized selection,

wherein said means for determining are arranged to determine said positions as sectors on an arcuate area.

25. A device according to claim 24, wherein:

the device further comprises means for indicating to the user the positions corresponding to the alternatives as one of the following:

showing a virtual image in each position, showing an arcuate area with a plurality of sectors at the level of the user's waist, said sectors corresponding said positions, and informing the alternative corresponding to a position audiophonically.

26. A device according to claim 24, wherein:

the device further comprises presentation means for indicating the alternative indicated at any given time to the user.

27. A device according to claim 24, wherein:

the means for recognizing the second movement carried out by the user in the position are adapted to recognize the second movement contactlessly.

28. A device according to claim 24, wherein:

the first movement is the movement of the user's hand.

29. A device according to claim 24, wherein:

the device further comprises means for carrying out a certain first function in response to the second movement.

30. A device according to claim 24, wherein:

the device further comprises means for carrying out a specific second function in response to the third movement.

31. A device according to claim 24, wherein:

   the means for recognising the second movement carried out by the user in the position are adapted to be attached to the user.

32. A device according to claim 24, wherein:

   the device comprises at least one of the following: a mobile station, a computer, a television apparatus, a data network browsing device, an electronic book, and an at least partly electronically controlled vehicle.

34. A method according to claim 17, wherein said arcuate area is a selection disc.

35. A method according to claim 21, wherein said first movement is a substantially horizontal arcuate movement of the hand to a certain sector of an arcuate area situated substantially in a horizontal plane.

36. A method according to claim 35, wherein said second movement is a substantially vertical movement of a hand at said certain sector.

37. A method according to claim 35, wherein said second movement is placing a hand into a certain position at said certain sector.

38. A method according to claim 17, further comprising:

   determining the positions corresponding to each alternative in the space surrounding a user also on the basis of their distance with respect to the user.

40. A device according to claim 24, wherein said arcuate area is a selection disc.

41. A device according to claim 28, wherein said first movement is a substantially horizontal arcuate movement of the hand to a certain sector of a circular area situated substantially in a horizontal plane.

42. A device according to claim 41, wherein said second movement is a substantially vertical movement of a hand at said certain sector.

43. A device according to claim 41, wherein said second movement is placing a hand into a certain position at said certain sector.

44. A device according to claim 24, wherein said means for determining are arranged to determine said positions also on the basis of their distance with respect to the user.

45. A system for recognizing user's selection, the system comprising:

a central unit,

a three dimensional display device,

the central unit comprising communication means for communicating positions corresponding to selection alternatives to the three dimensional display device,

the three dimensional display device being arranged to display to the user the positions corresponding to selection alternatives surrounding the user, said positions being sectors on an arcuate area surrounding the user,

means for recognizing a movement of a member of a body of the user on said arcuate area, and

communication means for communicating a recognized movement from the means for recognizing to the central unit,

wherein the central unit being arranged to process the selection of an alternative on the basis of the recognized movement.

46. A system according to claim 45, wherein the central unit comprises at least one of the following: a mobile station, a computer, a television apparatus, a data network browser device, an electronic book, and at least partly electronically controlled vehicle.

47. A system according to claim 45, wherein the means for recognizing is a camera.

48. A system according to claim 45, wherein the means for recognizing is a shape tape.

49. A system according to claim 45, wherein the arcuate area is a selection disk.

50. A system according to claim 45, wherein the three dimensional display device and the means for recognizing are comprised in the same unit.

51. A system according to claim 45, wherein the three dimensional display device is virtual glasses.

52. A user interface for recognizing a selection from a set of at least two alternatives, the user interface comprising:

means for determining positions surrounding the user that correspond to each alternative on the basis of their direction with respect to the user so that the locations of the positions remain substantially the same with respect to the user irrespective of the location of the user;

means for allowing the user to do a first movement of a member of the body to a position corresponding to an alternative the user desires;

means for recognizing a second movement of a member of the body done by the user in the position;

means for recognizing the carrying out of the selection the user desires in response to the second movement; and

an output for outputting the recognized selection,

wherein said means for determining are arranged to determine said positions as sectors on an arcuate area.

53. A method according to claim 17, wherein allowing the user to do said first movement of a member of the body allows the user to move a first member of the body and the recognizing of said

second movement recognizes the movement of a second member of the body, wherein the first and second members of the body are selected from the group consisting of:

the first and second members of the body are a common member of the body of the user; and

the first member of the body is a hand and the second member of the body is the fingers of the hand.

54. A device according to claim 24, wherein said means for the allowing the user to do said first movement of a member of the body allows the user to move a first member of the body and the means for recognizing of said second movement recognizes the movement of a second member of the body, wherein the first and second members of the body are selected from the group consisting of:

the first and second members of the body are a common member of the body of the user; and

the first member of the body is a hand and the second member of the body is the fingers of the hand.

55. A system according to claim 45, further comprising means for allowing the user to do said movement of a member of the body and allowing the user to move a first member of the body and wherein the means for recognizing recognizes the movement of a second member of the body, wherein the first and second members of the body are selected from the group consisting of:

the first and second members of the body are a common member of the body of the user; and

the first member of the body is a hand and the second member of the body is the fingers of the hand.

56. A user interface according to claim 52, wherein said means for allowing the user to so said first movement of a member of the body allows the user to move a first member of the body and the means for recognizing of said second member recognizes the movement of a second member of the body, wherein the first and second members of the body are selected from the group consisting of:

the first and second members of the body are a common member of the body of the user; and

the first member of the body is a hand and the second member of the body is the fingers of the hand.

IX. EVIDENCE APPENDIX

Not applicable

X. RELATED PROCEEDINGS APPENDIX

Not applicable